

Wessinger-Hill, JoAnne

From: Linda Kitchens <linda@elliottlaw.us>
Sent: Wednesday, August 5, 2020 6:40 PM
To: Wessinger-Hill, JoAnne; Butler, David
Cc: Scott Elliott
Subject: [External] Bridgestone v. Dominion Energy Docket No. 2020-63-E
Attachments: Cover ltr-COS for Proposed Order 8-05-20.pdf; FINAL Proposed Order 8-05-20.docx

Please find attached a WORD copy of the Proposed Order in the above reference docket filed with the PSC today. All parties of record received a PDF copy of the proposed Order. Let me know if you have questions.

Best regards,

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August 5, 2020

VIA E-FILING

Ms. Jocelyn D. Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

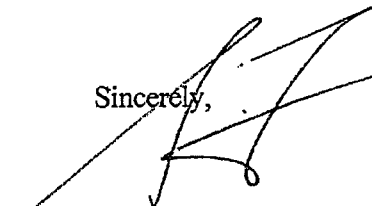
RE: Petition of Bridgestone Americas Tire Operations, LLC for an Order
Compelling Dominion Energy South Carolina to Allow the Operation of a
1980 kW AC Solar Array as Authorized By State Law
Docket No. 2020-63-E

Dear Ms. Boyd:

Enclosed please find for filing Bridgestone Americas Tire Operations, LLC's Proposed Order in the above-referenced docket. By copy of this letter, I am serving all parties of record.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Elliott', written over the word 'Sincerely,'.

Scott Elliott

SE/lbk

cc: All parties of record (via Regular and Electronic Mail)

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Petition of Bridgestone Americas Tire Operations, LLC for an Order Compelling Dominion Energy South Carolina to Allow the Operation of a 1980 kW AC Solar Array as Authorized By State Law

DOCKET NO.: 2020-63-E

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PLEADING:

PROPOSED ORDER

August 5, 2020



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**BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-63-E**

IN RE: Bridgestone Americas Tire)	
Operations, LLC,)	
Petitioner,)	PROPOSED ORDER
v.)	
)	
Dominion Energy South Carolina, Inc.)	
Respondent.)	

In a case of first impression, the Public Service Commission is asked to determine whether the South Carolina Distributive Energy Resource Act (“Act 236”) and Commission Order No. 2016-191 subjects a solar generator, which neither net meters nor sells output to the utility, to the South Carolina Generator Interconnection Procedures (“SC GIP”). Authorizing the operation of solar generation that neither net meters nor sells its output to the grid will not prejudice those solar generators that are subject to the SC GIP. Because this Commission construes Act 236 in a manner consistent with the General Assembly’s goal of promoting the development of distributive solar generation, we grant the petition and authorize the operation of the solar array.

PROCEDURAL BACKGROUND

This matter was commenced by a petition filed by Bridgestone Americas Tire Operations, LLC (“BATO”) on February 14, 2020, seeking an order requiring Dominion Energy South Carolina (“DESC”) to authorize the operation of a 1980 kW AC (sometimes noted as “1.98 MW”) solar array constructed in Aiken County, South Carolina (“Solar Array”). The Petition was pursuant to S.C. Code Ann. Sections 58-27-1940, 58-27-980, and 58-58-27-460(C) and S.C. Code Reg. Sections RR. 103-824 and 825 of the Commission’s Rules and Regulations and other applicable Rules and Regulations of the Commission. DESC filed and served its response to the Petition on February 21, 2020, denying that BATO was entitled to relief. DESC subsequently filed and served a supplemental response on March 6, 2020 which again denied that BATO was entitled to relief. The South Carolina Coastal Conservation League (“SCCCL”) filed and served a petition to intervene on April 6, 2020 in which it averred that BATO’s petition should be granted. The Commission granted the SCCCL petition by order dated April 22, 2020.

A hearing on BATO’s docket was held July 28 – 29, 2020. Because of the Covid-19 pandemic, the hearing was held electronically. Representing BATO was Scott Elliott, of the law firm Elliott & Elliott, PA. Representing DESC were J. Ashely Cooper and M. William Middleton III, of the law firm of Parker Poe. . Representing the South Carolina Office of Regulatory Staff (“ORS”) were Jeffrey M. Nelson and Alexander W. Knowles. Appearing on behalf of SCCCL were Katherine Nicole Lee, Mathieu Erramuzpe and J. Blanding Holman IV.

Testifying for BATO were Courtney Cannon, Derrick Freeman and Edward G. (“Ted”) McGavran III. Testifying for DESC were Pandelis (“Lee”) N. Xanthakos, Mark C. Furtick, Joseph L. Hodges, Jr., Mathew J. Hammond, and John H. Raftery. SCCCL offered no witnesses.

BATO'S MOTION TO STRIKE

BATO filed a motion to strike certain of DESC's testimony July 17, 2020. The grounds for BATO's Motion to Strike include that certain portions of the prefiled testimony of DESC Witnesses Mark C. Furtick, John H. Raftery, and Pandelis N. Xanthakos, and Matthew J. Hammond are inadmissible under the rules of this Commission, including S.C. Code Ann. Regs. 103-846(A), and applicable provisions of the South Carolina Rules of Civil Procedure ("SCRCP") and the South Carolina Rules of Evidence ("SCRE"). Based on this Commission's review of the Motion submitted by BATO, the evidence stricken would have had no impact on the outcome as decided. Based on the foregoing, the Commission strikes DESC's prefiled testimony as follows:

1. The portions of the direct testimony of Witness Raftery identified in the Motion that contain evidence of conduct or statements made in compromise negotiations with BATO are inadmissible and stricken pursuant to Rule 408, SCRE.¹

2. The portions of the direct testimony of Witness Raftery identified in the Motion that contain hearsay statements made by members of ORS and South Carolina Solar Business Alliance.²

3. The portions of the direct testimonies of Witnesses Raftery, Furtick, and Xanthakos identified in the Motion that contain legal conclusions as to the application and interpretations of regulations and the SC GIP, including testimony offered by lay witnesses as to the ultimate issue before this Commission, are inadmissible and stricken from the record pursuant to Rule 704, SCRE

¹ See Raftery prefiled direct testimony, Page 7, l. 20 – page 11, l. 11.

² See Raftery prefiled direct page 8, ll. 20-21; page 9, l. 22 – page 10, l. 2; page 9, ll. 17 -21; page 10, l. 21 – page 11, l. 2; page 4, 19 – page 5, l. 10; page 12, l. 20 – page 13, l. 3.

and *Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020), *reh'g denied* (Feb. 20, 2020).³

4. The portions of the surrebuttal testimonies of Witnesses Furtick, Xanthakos, and Hammond identified in the Motion that contain legal conclusions offered by lay witnesses as to the ultimate issue before this Commission are inadmissible and stricken from the record pursuant to Rule 704, SCRE and *Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020), *reh'g denied* (Feb. 20, 2020).⁴

SUMMARY OF THE EVIDENCE

1. BATO's Passenger and Light Truck Tire Plant Operations

BATO operates a passenger and light truck tire manufacturing plant in Graniteville, South Carolina where it employs approximately 1,730 employees and contractors at a 2.78 million square foot (nearly 64 acres under roof) facility located on a 585-acre site. BATO is currently constructing an expansion at its Graniteville site that will increase the size of the Graniteville manufacturing plant by 366,000 square feet. In addition to the Graniteville passenger and light truck tire plant, BATO also operates an off road tire manufacturing plant in Aiken County. Cannon prefled direct p. 2, l. 19 – p. 3, l. 8.

³ See Raftery prefled direct testimony, page 9, l. 3-6; page 9, l. 11-12; page 4, l. 6-17; page 5, l. 2-9; page 5, l. 15-19; page 7, l. 5-16; page 8, l. 9-12; page 12, l. 8- page 14, l. 10. See Furtick prefled direct testimony, page 2, l. 18-22; page 4, l. 19- page 5, l. 2; page 5, l. 6-12; page 5, l. 18-20; page 6, l. 14- page 7, line 4; page 8, l. 3-10; page 8, l. 20- page 9, l. 2; page 9, l. 3-6; page 9, l. 11-12. See Xanthakos prefled direct testimony, page 4, l. 18- page 5, l. 2; page 5, l. 6- page 6, l. 9; page 6, l. 16- page 7, l. 3; page 8, l. 15-19; page 10, l. 8-17; page 10, l. 19- page 11, l. 2.

⁴ See Furtick prefled surrebuttal testimony, page 1, l. 15- page 2, l. 3; page 3, l. 4-6; page 3, l. 12-13; page 4, l. 3-4; page 5, l. 3; page 5, l. 10-15; page 6, l. 1-2; page 7, l. 10-13. See Xanthakos prefled surrebuttal testimony, page 2, l. 17- page 3, l. 2; page 4, l. 7-8; page 6, l. 18-20. See Hammond prefled surrebuttal testimony, page 4, l. 5-7; page 5, l. 9-11; page 6, l. 1, 3-5, 7-9; page 7, l. 4-10; page 8, l. 4-5; page 9, l. 3-5; page 9, l. 20- page 10, l. 2; page 15, l. 8.

BATO's operations at the Graniteville passenger and light truck tire plant operate 24 hours a day, seven days a week. When operating, the electric load is relatively constant. When manufacturing, the electric load is in the range of 30 - 34MW. Freeman prefiled direct p. 4, ll. 2-4. Even when totally idle with no maintenance activities, the plant consumes considerable amounts of electricity. For instance, during the recent plant shut down, resulting from the coronavirus pandemic, the absolute minimum electric load of the plant was still greater than the maximum output of the subject 1.98 MW Solar Array. The electric load for Bus 1 had a single dip that was still greater than 2.3 MW and Bus 2 did not get below 4.0 MW the entire month. Freeman prefiled direct p. 4, ll.11 – 16.

2. BATO's Contract For Electric Service with DESC

The electricity needs of both of BATO's Aiken County plants are served by DESC. The parties' duties and obligations are governed by a contract for electric service last amended in January of 2012 and approved by this Commission. Hearing Ex. 2. The contract provides that BATO's service installations shall be made in accordance with the terms and conditions of the contract to include the provisions of the National Electrical Code, the Regulations of the National Board for Fire Underwriters, and the regulations of this Commission. BATO is also obligated to operate its equipment to avoid adverse impact to DESC's system. Hearing Ex. 2. In addition, DESC may access BATO's premises to inspect, operate and maintain both DESC's and BATO's facilities and equipment for purposes related to delivery of its service. Hearing Ex. 2.

3. BATO's Construction of the Solar Array

BATO's 1.98 MW Solar Array was constructed in October of 2018 at its Graniteville plant at a cost of approximately \$2.7 million. The Solar Array was designed by a consultant hired by BATO alongside its engineering team and in accordance with DESC's technical specifications as required by the parties' contract for electric service. Cannon prefiled direct page 7, ll. 3-4.⁵ The electricity generated by BATO's Solar Array is for the exclusive benefit of the BATO plant. The Solar Array will provide BATO with the opportunity to manage its electrical consumption and will contribute to reductions in the peak electrical demand.

The Solar Array as designed, will supplement about 1.5% of the electricity needed for the plant and will eliminate 1,400 metric tons of CO2 emissions annually. BATO estimates that when operational, the Solar Array would offset its electricity costs by approximately \$20,000 per month. Cannon prefiled direct, page 7, ll. 9-18. Despite the offset from the Solar Array, once the expansion of the Graniteville plant is completed the net effect will be an increase in electricity demand from the plant. Cannon prefiled direct p. 7, ll. 15-16. Bridgestone maintains sustainability objectives for its global operations and its American tire manufacturing operations is also acting to reduce CO2 emissions. Bridgestone has set an aggressive absolute target for a 50% overall reduction of CO2 by 2050. The Bridgestone 2050 absolute targets for CO2 reduction require the utilization of renewable energy. Cannon prefiled direct p. 5, l. 13 – p. 6, l. 12.

⁵ Prior to constructing the 1.98 MW Solar Array herein, BATO studied the possibility of constructing a solar array to be interconnected to and to be operated in parallel with SCE&G's (now DESC's) distribution and transmission system, but chose not to build that particular solar array project after it missed the opportunity to participate in SCE&G's Bill Credit Agreement program. Cannon prefiled direct testimony page 6, ll. 17-22.

Relying on guidance from DESC, BATO submitted a fast track interconnection application to DESC on February 5, 2018 and was placed in DESC's queue at that time. Hearing Ex. 12. By March 19, 2018, at DESC's request, BATO's solar consultant provided DESC with specifications for reverse flow protections, in particular a Multilin 350 relay with reverse power protection. In response, DESC informed BATO's consultant that the Multilin 350 relay was an acceptable solution to DESC's reverse flow concerns and DESC informed BATO's consultant that DESC would refund BATO's interconnection fast track application fee and instead proceed directly to preparing an interconnection agreement obviating the need for BATO to enter the queue⁶ Hearing Ex. 13.

Subsequently, DESC reversed its position and required BATO to remain in the queue and further notified BATO that it did not qualify for the fast track. BATO's Solar Array is in 375th place in the queue and DESC representatives have been unable to inform BATO when its Solar Array will be allowed to operate. Freeman prefiled direct p. 7, ll. 7-8. In response to Commissioner questions, DESC witness Hammond was unable to tell the Commission when DESC would reach the BATO application

In September of 2018, because of budgeting concerns, BATO approached DESC to request DESC's consent to permit BATO to construct the Solar Array without activating the Solar Array. Daniel F. Kassis, a DESC Vice President, informed BATO that DESC was working to find a way to resolve the interconnection issue and agreed to BATO's building the Solar Array without interconnecting it. Hearing Ex. 9.

⁶ The remaining consideration left unresolved was accommodating the 115 kV auto switching scheme. However, this consideration was not significant enough to delay an interconnection agreement. Hearing Ex. 13. Thirty months later, DESC has not addressed the question of the auto switching scheme. Furtick prefiled direct p. 9, l. 18 – p. 10, l. 2.

a. Net Metering Or Sale of Output

The Solar Array functions as a behind the meter resource which displaces load from the utility. McGavran prefiled direct Page 7, ll. 11-13. The Solar Array was not installed for the purpose of net metering or the sale of its full output to DESC. Freeman prefiled direct page 8, ll.1-5; McGavran prefiled direct page 10, ll. 22 – page 11, l. 5. The electricity generated by the Solar Array would be consumed exclusively by BATO's operations at its Graniteville plant. Cannon prefiled direct page 6, l. 23 – page 7, l. 4. The fact that the electricity generated by the solar array will not be net metered or sold to DESC or third parties is material to the issue before this Commission and is not in dispute.

b. Parallel Operation

The BATO Solar Array connects directly with the plant on an existing internal feeder, does not connect directly to DESC's utility system, and, in addition, is far removed electrically from the utility system. All load from the Solar Array is delivered to the facility directly. McGavran prefiled direct page 12, ll. 1-4. It is not connected in parallel with DESC but is a series connection with the plant. To protect and safeguard DESC's equipment and facilities, DESC required BATO to install reverse power flow protection relays preventing electricity from being inadvertently transmitted from the Solar Array to DESC. Freeman prefiled direct at page 6, ll. 8-11.

DESC witness Furtick testified that since the solar array will provide electricity to BATO simultaneously with DESC's operations that the solar array will be deemed to operate in parallel with DESC. Furtick prefiled direct p. 6, l. 20 – p. 7, l. 17; Xanthakos prefiled direct p. 5, ll. 11 – 15. However, DESC offers no evidence that simultaneous operation constitutes "parallel operation" for purposes of the SC GIP or that the simultaneous generation of electricity described in its

testimony was a concern underlying the deployment of distributed energy resources and the application of Order No. 2016-191. The solar array does not export electricity to DESC's system.

c. *Interconnection*

BATO's Solar Array does not interconnect directly with DESC's system but operates inside the plant as a separate power generating resource and acts in effect, as a negative load that displaces energy from the utility as noted above. The Solar Array is a series connection with the plant and has multiple levels of protection between it and DESC's utility grid. McGavran prefiled direct p. 7, ll. 7 – 15. With the implementation of the reverse power relaying function, the Solar Array has no chance of ever having any impact on the utility grid. McGavran prefiled direct page 11, ll 2-5. BATO's plant point of connection with DESC is in DESC's substation, where BATO's and DESC's conductors connect. *See* HEX 2. Both DESC and BATO have breakers on their respective side of the substation for protection from faults. These levels of protection are in addition to the fused protection of the Solar Array itself. McGavran prefiled direct p. 7, ll. 7-10. The solar array is also downstream of the BATO plant breakers and is not connected to DESC's substation. McGavran prefiled rebuttal p. 4, ll. 17 – 25.

DESC does not dispute the fact that the solar array is not directly interconnected to the DESC system. Rather, DESC witness Xanthakos testified that because the solar array was connected to the BATO plant and the BATO plant was interconnected to DESC, therefore the solar array was interconnected to DESC. Xanthalos prefiled direct p. 5, l. 20 – p. 6, l. 1. Mr. Xanthakos further testified that the DESC and the solar array interconnection facilities as defined by the SC GIP constitute the internal BATO electric system from DESC's point of interconnection with the

plant to the solar array. PNX 1, HEX 8. There is no point of interconnection for the solar array to DESC.⁷

d. Interconnection Queue

The Solar Array was constructed in compliance with all Federal, State, and local codes, the regulations of this Commission, and the General Terms and Conditions, Specifications for Service and Meter Installations set out in the contract for electric service between BATO and DESC approved by this Commission. Freeman prefiled direct page 6, ll. 5-19. BATO has complied with the contract for electric service with DESC and BATO's solar array meets every condition imposed upon it by the utility. The Multilin 350 reverse flow monitor installed at DESC's direction proved to work during a June 4, 2020 fault. McGavran prefiled rebuttal p. 6, l. 1 – p. 7, l. 10. The solar array will not net meter nor sell its output to DESC or a third party. Because the solar array does not operate in parallel or interconnect with DESC's system, there is no need for DESC to perform any type of study on its system to determine system impacts. McGavran prefiled direct p. 11, ll. 9 – 15. In DESC witnesses Xanthakos' hearing testimony, he raised questions concerning the impact of the solar array on DESC's system if the solar array fails to operate as designed. Nevertheless, DESC witnesses do not dispute that there are multiple levels of protection for DESC's system on top of the fused protection provided by the Solar Array itself. In addition, BATO acknowledges, per the parties' Commission-approved contract, DESC has the right to inspect the equipment associated with BATO's solar array. Hearing Ex. 2.

⁷ This point is further supported by the Commission approved contract between the parties, which states that the term 'Point of Interconnection shall mean the point at which Company and Customer's conductors are connected. Hearing Ex. 2.

FINDINGS OF FACT

Based upon the foregoing recitation of facts, the Commission makes the following findings:

- 1) BATO is the owner and operator of a passenger and light truck tire manufacturing plant in Aiken County South Carolina which consumes considerable amounts of electricity in its manufacturing processes.
- 2) BATO has entered a contract for electrical service with DESC, for the supply of electric load to the BATO plant. Per the parties' Commission approved contract, DESC may inspect both DESC's and BATO's facilities and equipment for all purposes connected to the delivery of electric service, including to protect DESC's utility system against impact or damage. BATO has at all times complied with the terms and conditions of its contract with DESC.
- 3) Based upon guidance from DESC, on February 5, 2018 BATO applied for an interconnection agreement and fast track status with DESC for the operation of a 1.98 MW solar array. BATO is currently in the 375th position in the SC GIP queue. By March 2018, BATO provided DESC with the specifications of the solar array, yet DESC has not informed BATO and the Commission when the interconnection application will be acted on. With DESC's consent to build, BATO constructed the solar array in the fall of 2018, but did not connect the solar array with the BATO electric facilities.
- 4) The Solar Array functions as a behind the meter resource which displaces load from the utility. The solar array, once in operation, will meet approximately 1.5 % of the passenger and light truck tire plant's electrical needs. BATO's Graniteville plant is

undergoing an expansion that, when complete, will result in a net increase in electricity demand from DESC regardless of any offset from the Solar Array.

- 5) The BATO Solar Array connects directly with the plant on an existing internal feeder, does not connect directly to DESC's utility system, and, in addition, is far removed electrically from the utility system. All load from the Solar Array is delivered to the facility directly. There is no point of interconnection for the solar array to DESC.
- 6) DESC's facilities, equipment and the BES are protected from reverse flow by the solar array. First, there are two breakers between the solar array and the point of BATO's interconnection with DESC. Second, the BATO plant when idle, consumes electricity far in excess of the electricity generated by the solar array. Third, to protect and safeguard DESC's equipment and facilities, BATO, at DESC's request, installed reverse power flow protection relays to prevent electricity from being transmitted from the solar array to DESC's equipment.
- 7) The solar array has been designed and constructed so that it cannot operate to net meter or sell any part of its output to DESC or third parties.
- 8) The solar array connects directly to BATO's plant on an internal feeder and is not interconnected to DESC's system.
- 9) The solar array does not export electricity to DESC's system, or any other third party, and does not operate in parallel with DESC's system.
- 10) In the event that BATO were granted a waiver of the SC GIP, no other interconnection applicant would be prejudiced. Rather, those applicants behind BATO in the queue would advance and benefit.

CONCLUSIONS OF LAW

1. The SC GIP's Does Not Apply to BATO's Solar Array.

Act 236 created the South Carolina Distributed Energy Resource Act to promote the establishment of demand and supply side resources that can be deployed to an electrical utility to meet the energy needs of the customers served by that utility. Specifically, Act 236 created opportunities for renewable energy that net meter or sell the full electrical output to the interconnecting utility.

The goal of Act 236 was “to promote the establishment of a reliable, efficient, and diversified portfolio of distributed energy resources for the State.” S.C. Code Ann. § 58-39-110. Distributed energy resource means demand and supply side resources to be deployed throughout an electrical utility’s system to meet the energy needs of customers served by the system. S.C. Code Ann. § 58-39-120(C). Under Act 236, a renewable energy facility is defined as a renewable generation resource placed in service for use by or to provide power to an electrical utility. S.C. Code Ann. § 58-39-120(E). In addition to distributed energy by wholesale contract as described above, Act 236 established a net metering tariff to authorize the offset of the cost of part or all of a customer generator’s electrical energy needs. S.C. Code Ann. §§ 58-40-10 et seq.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislation. Under the plain meaning rule, it is not the province of the Commission to change the meaning of a clear and unambiguous statute. *South Carolina Energy Users Committee v. Public Service Commission*, 388 S.C. 486, 697 S.E.2d 587 (2010). The stated goal of the South Carolina Distributed Energy Resource Act was to promote distributed energy resources for the State. By creating an interconnection standard applicable to parallel non-utility generators that either net

meter or sell its output to the interconnecting utility by Order No. 2016-191, the Commission satisfied the goal of Act 36 and the South Carolina Distributed Energy Resource Act. Had the General Assembly intended to authorize the Commission to include all renewable generation in the SC GIP, as argued by DESC, it could have clearly so stated in Act 236.

Moreover, The Commission is forced to construe the meaning of parallel generation and interconnection in light of the goals of Act 236. Since the goals of the South Carolina Distributed Energy Resource Act was to promote distributed energy resources by deploying them to the grid, the Commission must conclude that the terms parallel operation and interconnection must be defined consistently with the export of electricity to the grid. Thus, a parallel non-utility generator will interconnect directly to the grid to export electricity to the interconnecting utility. DESC would have the Commission construe Act 236 and the SC GIP to apply to all solar generators which operate simultaneously with DESC's system and which indirectly connect to DESC's system. DESC's construction of Act 236 would include solar generation consumed solely by a generator owner which does not deploy electricity to the grid as being subject to the SC GIP. DESC's construction of Act 236 would retard the growth of solar energy, which in light of the goals of the South Carolina Distributed Energy Resource Act leads to an absurd result, prohibited by the rules of statutory construction. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).

Accordingly, only those renewable energy facilities that net meter or sell its output to an interconnecting utility are subject to the interconnection procedures of the SC GIP promulgated by this Commission under Act 236's authority.

Moreover, this Commission finds that by amending portions of Act 236 with enactment of the South Carolina Energy Freedom Act, on May 16, 2019, the South Carolina General Assembly effectively repealed portions of the SC GIP. Under South Carolina law, binding on this Commission, repeal of a statute repeals inconsistent regulations authorized by that statute. *See S.C. Department of Natural Resources v. McDonald*, 367 S.C. 531, 535, 626 S.E.2d 816, 818 (Ct. App. 2006); *In re Terrence M.*, 317 S.C. 212, 214, 452 S.E.2d 626, 627 (Ct. App. 1994). Consequently, the amendment of Act 236 by the Energy Freedom Act made clear that self-consuming solar arrays like BATO's are exempt from the interconnection procedures promulgated under the authority of Act 236.

The SC GIP was proposed to the Commission for approval by a Joint Application of South Carolina Electric & Gas company, et al., for Approval of Revised South Carolina Interconnection Standard, in Docket No. 2015-361-E. The Commission approved the SC GIP standard as proposed by the South Carolina Electric and Gas company, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC. The joint application states the proposed standard as:

The Proposed Standard would apply to any parallel non-utility generator requesting to interconnect to a utility's system, **and to either net meter or sell its full output** to the interconnecting utility. Joint Application of South Carolina Electric & Gas company, et al, for Approval of Revised South Carolina Interconnection Standard, in Docket No. 2015-361-E at page 5. (emphasis added).

The Commission in turn stated the scope of the proposed SC GIP as follows:

Any parallel non-utility generator requesting to interconnect to a South Carolina utility's system **and to either net meter or sell its full output** to the interconnecting utility **would interconnect** under the Proposed Standard. Order No. 2016-191, dated April 26, 2016, at Pages 5-6. (emphasis added).

Because the SC GIP applies only to solar generators interconnecting to DESC's utility system which net meter or sell their full output to DESC, BATO's Solar Array, constructed solely for self-consumption by BATO, is not subject to the SC GIP.⁸

DESC argues that if the SC GIP does not apply, then BATO is effectively unregulated. DESC's argument is without merit. The SC GIP is a procedural mechanism that generators must comply with if certain conditions are met—they are proposing to interconnect to the utility system and will either net meter or sell their output to DESC. There is no evidence before this Commission that BATO claims to be completely unregulated by the General Assembly or this Commission; rather, BATO argues that the SC GIP is not the proper procedure to place its solar array into operation. DESC has not provided this Commission with any other statute or regulation that would bind BATO to the interconnection procedures otherwise. Moreover, the parties' contract for electrical service places BATO under this Commission's authority.

While the BATO solar array is not subject to the SC GIP, DESC retains the right to inspect BATO's facilities and its utility system via the parties' contract for electrical service. The parties' contract for electric service was approved by this Commission in Orders No. 2009-102 and 2012-392. The contract affords DESC with the same level of protection for its equipment and facilities with respect to the operation of the solar array as the SC GIP. The evidence of record reflects that DESC is fully protected even if the SC GIP does not apply to BATO. As BATO has acknowledged, DESC is entitled to inspect the solar array to ensure the safety of its utility system.

⁸ DESC argues that if BATO's Solar Array is not subject to the SC GIP, it must be subject to FERC jurisdiction. DESC is mistaken. DESC acknowledged in its Joint Application in Docket No. 2015-362-E that FERC jurisdiction extends to "[i]nterconnection of generators that sell some or all of its [sic] electricity to an entity other than the interconnecting utility." Joint Petition in Docket No. 2015-362-E at page 5, footnote 3. BATO's solar array does not sell energy at all and therefore, is not subject to FERC jurisdiction.

Consequently, BATO is entitled to an order of this Commission requiring DESC to act forthwith pursuant to the parties' contract for electric service and to take all steps necessary to ensure that the operation of the solar array protects and safeguards its equipment and facilities and allow BATO to operate its solar array.

2. *BATO's Solar Array Does Not Operate in Parallel With and Is Not Interconnected To DESC's Utility System.*

The Commission concludes that the BATO solar array does not operate in parallel with DESC's generation. Under the SC GIP, a parallel non-utility generator that will connect directly with the utility system and deploy electricity directly to the utility is subject to the interconnection procedures. BATO's solar array connects directly with the plant on an existing internal feeder and is far removed electrically from the utility system. All load from the Solar Array is delivered to the BATO plant directly. DESC and BATO have constructed two breakers between the solar array and the point at which BATO interconnects to DESC. To protect and safeguard DESC's equipment and facilities further, DESC required BATO to install reverse power flow protection relays preventing electricity from being inadvertently transmitted from the Solar Array to DESC.

The Commission also concludes that BATO's Solar Array is not interconnected to DESC's grid for the purposes of the SC GIP. The SC GIP applies only when a non-utility generator will interconnect directly with the utility's system. The Solar Array does not interconnect directly with the utility grid but operates inside the plant as a separate power generating resource and acts in effect, as a negative load that has the effect of displacing energy from the utility. As stated above, with the implementation of the reverse power relaying function, the Solar Array has no chance of ever having any impact on the utility grid. Consequently, no utility interconnection agreement is required for safe system operation of this facility.

3. *This Commission has the Authority to Waive the Requirements of the SC GIP.*

In approving the SC GIP, this Commission intended the queue to be fairly and equitably operated, approving a first come, first served priority. The SC GIP was intended to promote transparency, but DESC finds it impossible to inform BATO and the other applicants in the queue when their interconnection applications might be reached.

This Commission may waive compliance with its rules and regulations where compliance introduces unusual difficulty or where circumstances indicate that a waiver of the regulations is otherwise appropriate and not contrary to the public interest. S.C. Code Ann. Regs. 103-301.3. In considering requests for a waiver of the queue requirement, the Commission considers the following:

- the prejudice if any to those applicants ahead of the requestor in the queue;
- the extent to which the requestor's solar project will require modifications to the utility's distribution and transmission facilities;
- the financial burden on the requestor;
- the output of the solar generator;
- whether the waiver was in the public interest; and
- other unique or discrete relevant factors.

Under the circumstances, this Commission would grant the waiver. First, no other party currently in the queue will be prejudiced. BATO's solar array is a unique project that is not similarly situated with other solar generators in the interconnection queue. Second, BATO's Solar Array does not net meter or sell power to the grid; therefore, no modifications will be required to DESC's distribution and transmission facilities. Third, not only has BATO constructed the Solar

Array at considerable expense—\$2.7 million--and only after receiving DESC's approval to do so, it continues to expend upwards of \$20,000 per month on electricity from DESC while the solar array is forced to sit idle. Fourth, due to ongoing expansion of the Graniteville plant, the effect of that expansion and any offset from the solar array will be an increase in electricity demand by the plant from DESC. Fifth, a waiver would be in the public interest in that it satisfies the intent of the General Assembly to encourage renewable generation, reduces the dependence on fossil fuels, and contributes to a clean environment for all South Carolinians. Last, as stated above, the parties have a contract that governs their respective rights and obligations regarding the Solar Array. The contract sufficiently protects DESC's interests and there is no dispute that BATO has complied with every requirement imposed by DESC under the parties' contract. It would be prejudicial to subject BATO to the interconnection queue after expending the time, effort, and money to satisfy DESC's demands, particularly when two sophisticated parties have had a meeting of the minds and bargained for their respective rights and obligations. As a result, BATO is also entitled to a waiver of the interconnection procedures set forth in the SC GIP and an order requiring DESC to abide by the contract and place the solar array in operation.

CONCLUSION

For the foregoing reasons BATO's Petition seeking an order requiring DESC to authorize the operation of a 1980 kW AC solar array constructed in Aiken County, South Carolina is granted. The interconnection procedures in the SC GIP do not apply to BATO's Solar Array because it will not interconnect to DESC's utility system and will not either net meter or sell its output to DESC. Further, the Solar Array is not interconnected to DESC's system and will not operate in parallel

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therewith. BATO has incurred considerable expense and has been in the interconnection queue for 30 months. Every reasonable inference from this record reflects that DESC has been aware of what steps are necessary to conclude its study of the impact of this solar array since March of 2018. Accordingly, DESC shall conduct all relevant and necessary studies to determine what, if any, additional measures are necessary to protect and safeguard its equipment and facilities and authorize BATO to operate its Solar Array within 60 days of the date of this order. The parties are expected to conduct themselves in good faith and deal fairly with each other. Although it expects none, this Commission shall retain jurisdiction of this matter to resolve any disputes that may arise.

IT IS SO ORDERED.

Comer H. Randall, Chairman

Jocelyn D. Boyd, Clerk